IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/03/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

Writ Petition No.2890 of 2004 and Writ Petition No. 2891 of 2004
and W.P.M.P.Nos.3393 to 3396 of 2004

Better Label Manufacturing Co.Ltd.,
1, 100 Ft.Road, Tharamani
Ramagiri Nagar, Velachery
Chennai, rep.by its Managing
Director, Dilip Sutharia .. Petitioner in W.P.2890/2004

Better Label Exports
1, 100 Ft.Road, Tharamani
Ramagiri Nagar, Velachery
Chennai, rep.by its Managing
Director, Dilip Sutharia .. Petitioner in
W.P.2891/2004

-Vs-

Commissioner of Customs (Port)
Chennai. .. Respondent in
both the W.Ps.

Prayer: Writ Petitions under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.G.Rajagopalan, Senior Counsel

For Respondent : Mr.V.T.Gopalan
Additional Solicitor General

:O R D E R

Petitioner has filed a Writ Petition in W.P.No.2302 of 1999 challenging the order of the Central Excise and Gold (Control) Appellate Tribunal (CEGAT) dated 2.2.1998, by which the petitioner companies were imposed a penalty of Rs.1,50,000/- and Rs.1,00,000/- respectively. The said writ petition was presented before the Registry on 28.12.1998. However, it was admitted only on 15.2.1999. In the meanwhile, the petitioner made a declaration to avail the benefit of Kar Vivad Samadhan Scheme invoking Section

95(i)(c) of the Finance (No.2)Act, 1998 (hereinafter referred to as 'the Act'), which reads as follows.

"Section 95: Scheme not to apply in certain cases- The provisions of the scheme shall not apply-
(i)....
(ii)in respect of tax arrear under any indirect tax enactment-
(a)...
(b)...
(c)in a case where no appear or reference or writ petition is admitted or pending before any appellate authority or the High Court or the Supreme Court or no application for revision is pending before the Central Government on the date of declaration made under Section 88."

2. However, the Commissioner of Customs, Chennai, the respondent herein, by a proceedings dated 28.5.1999, refused to give the benefit of Kar Vivad Samadhan Scheme, finding that the petitioner is not entitled for the benefit of Section 95(ii)(c) of the Finance (No.2) Act, 19 98, on the ground that the scheme was in force only till 31.12.1998 and the writ petition preferred by the petitioner was admitted only on 15.2.1999.

3. Aggrieved by the same, the petitioner seeks to issue Writ of Certiorarified Mandamus calling for the records of the respondent relating to order dated 28.5.1999 made in F.No.KVS/DECLA/221/1998 and quash the same and direct the respondent to issue final certificate to the petitioner under Karvivad Samadhan Scheme.

4. Mr.G.Rajagopalan, learned Senior Counsel appearing for the petitioner contends that the words 'writ petition is admitted or pending before any appellate authority or the High Court' as provided under Section 95(ii)(c) of the Act, would only mean that the writ petition is already filed before 31.12.1998 but was not disposed of.

5. Per contra, Mr.V.T.Gopalan, learned Additional Solicitor General, submits that the writ petition, which was not admitted before 31.12.1998 cannot be construed as a pending dispute as on 31.12.1998.

6. I have given careful consideration to the submissions of the learned counsel on both sides.

7. It is true that the word 'pending' would mean 'undecided issues' and a legal proceeding is deemed to be pending as soon as it is commenced and until it is concluded. But, nevertheless the commencement of the legal proceedings would not mean the mere presenting of papers to the Registry. I find from the original records that eventhough the papers were presented on 28.12.1998, the papers were returned from the registry for certain compliance on 13.1.1999. Again, the papers were re-presented after compliance only on 25.1.1999. Therefore, it could not be construed that the writ petition was pending as on 28.12.1998 inasmuch as, the presentation of the same by the

petitioner itself was not proper and therefore the relief claimed by the petitioner under the Karvivad Samadhan Scheme is barred by limitation. Finding no merits in the writ petitions, they are dismissed.

Index:Yes
Internet:Yes

KST.

To
Commissioner of Customs (Port)
Chennai.